Tentative Rulings for September 8, 2015
Department PS1

To request oral argument you must notify Judicial Secretary Barbara Berg at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local rule 3316). Tentative Rulings for each law and motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at http://www.riverside.courts.ca.gov/tentativerulings.shtml. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, not later than 4:30 p.m. on the court day before the hearing, you must (1) notify the judicial secretary for Department PS1 at (760) 904-5722 and (2) inform all other parties. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing.

Unless otherwise noted, the prevailing party is to give notice of the ruling.

1.

PSC 1404259	Shawn Colvin, et al. v. Bahama Palm Springs, LLC, et al.	Motion to Compel Responses to Form Interrogatories, Set One, Directed to Plaintiff Richard Marek; Request for Monetary Sanctions in the Amount of $1,335.00 by Defendant Ella Flynn

Tentative Ruling: Motion is granted. No opposition was filed.

There is no provision in the Code of Civil Procedure or Rules of Court which provides that a motion is deemed to be meritorious because no opposition was filed. However, "[s]ome courts treat a party's failure to file opposition papers as an admission that the motion is meritorious, and therefore refuse to hear oral argument from such party. The purpose is to prevent introduction of legal theories without notice to opposing counsel and the court." (Weil & Brown, par. 9:105.10 citing *Sexton v. Sup. Ct.* (1997) 58 Cal.App.4th 1403, 1410.) *Sexton* referenced Los Angeles Superior Court Rules, rule 9.15, which previously provided in part: "The failure to file opposition creates an inference that the motion or demurrer is meritorious." (*Id.* at 1410.) However, this provision in rule 9.15 was deleted in 2000.

It should be noted that CRC, rule 3.1113(a) provides as follows: "A party filing a motion...must serve and file a supporting memorandum. The court may construe the absence of a memorandum as an admission that the motion or special demurrer is not

meritorious and cause for its denial...." Arguably, it follows that the failure to file an opposition may be construed as an admission that the motion is meritorious.

The Court, having reviewed the records and files in this matter as well as the papers filed in support of the motion, finds that the motion should be granted.

The Court will sign the Defendant's proposed order.

Defendant Flynn is to give notice pursuant to Code of Civil Procedure section 1019.5, forthwith.

2.

PSC 1500780	Alice Alioto v. Daniel Giles, et al.	Motion for Interlocutory Summary Judgment for Partition Against by Sale Against Defendants Daniel Giles and All Persons Unknown by Plaintiff Alice Alioto

Tentative Ruling: Hearing on this motion is vacated.

3.

PSC 1501582	County of Riverside v. Café Canna Cabana, LLC, et al.	Demurrer to Plaintiff's Complaint by Defendant Noreon, Inc. dba Café Cannon Cabana

Tentative Ruling: Demurrer is overruled with thirty (30) days leave to answer.

In its complaint filed 4/6/15, Plaintiff alleges that "Defendants have caused, allowed, permitted, aided, abetted, suffered or concealed a business involving the dispensing of marijuana to operate at the Property, in violation of the County's zoning ordinance." (¶ 23). On 6/2/15, Plaintiff filed Amendment to Complaint naming Noreon, Inc. as Doe 1.

Defendant Noreon, Inc. demurs to the complaint on the ground of failure to state a cause of action.

The demurrer is overruled for the following reasons.

DISCUSSION: Defendant argues that "[t]here are no facts alleged as to the Doe defendants including Noreon and the Plaintiff should be required to amend its pleading." (Defendant's MOPA at 6:4-5.) This argument lacks merit. A plaintiff is only required to plead ultimate facts. "(T)he complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (Weil & Brown, *Cal. Practice Guide, Civil Procedure Before Trial*, The Rutter Group, ¶ 6:123 citing *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.App.4th 861, 872.) "Thus, plaintiff need only plead such facts as are necessary 'to acquaint a defendant with the *nature, source and extent* of his claims.'" (*Id.*, ¶ 6:128 citing *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) Plaintiff alleges that each of Does 1 – 100 "is responsible in some manner for the nuisance and violation of the

County's land use ordinances herein alleged" (Complaint, ¶ 7), that all "Defendants have caused, allowed, permitted, aided, abetted, suffered or concealed a business involving the dispensing of marijuana to operate at the Property, in violation of the County's zoning ordinance" (Complaint, ¶ 23), and that Noreon, Inc. is identified as Doe 1 (6/2/15 Amendment to Complaint). Thus, the complaint alleges that Noreon, as one of the Doe defendants, operated or allowed the operation of a business involving the dispensing of marijuana on the subject property in violation of Plaintiff's zoning ordinance. These allegations adequately support a C/A for nuisance against Noreon, Inc.

Plaintiff is to give notice pursuant to Code of Civil Procedure section 1019.5, forthwith.